

# **EXHIBIT 7**



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# Transcript of Lee Reiners

**Date:** March 28, 2024

**Case:** Karnas, et al. -v- Cuban, et al.

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1 IN THE UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF FLORIDA

3 MIAMI DIVISION

4 -----x

5 DOMINIK KARNAS, et al., :

6 Plaintiffs, : Case No.

7 v. : 1:22-cv-22538-ALTMAN/REID

8 MARK CUBAN, et al., :

9 Defendants. :

10 -----x

11  
12  
13 Videotaped Deposition of

14 LEE REINERS

15 Conducted Virtually

16 Thursday, March 28, 2024

17 10:05 a.m. EST

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19  
20  
21  
22  
23 Job No.: 530570

24 Pages: 1 - 136

25 Reported by: Nancy C. Bendish, CCR, RMR, CRR

Transcript of Lee Reiners  
Conducted on March 28, 2024

63

1	MR. BEST: Okay. Go ahead, Dan.	11:32:44
2	- - -	11:32:49
3	BY MR. SACHS:	11:32:49
4	Q. Do you have an awareness of the	11:32:50
5	cryptocurrencies that were offered for purchase	11:32:52
6	or custody on the Voyager application?	11:32:56
7	MR. ZACK: Objection to form. No	11:33:01
8	idea what the term "awareness" means.	11:33:05
9	A. I don't know every single	11:33:11
10	cryptocurrency that was available for purchase	11:33:14
11	and custody on the Voyager app. I do know that	11:33:18
12	Bitcoin was one, Ether was one, VGX of course	11:33:24
13	was one, and I know there were multiple others	11:33:32
14	but I can't name every single one.	11:33:36
15	Q. And do you have a belief, one way	11:33:38
16	or the other, as to whether each of those	11:33:41
17	cryptocurrencies were eligible for earning	11:33:44
18	interest on the Voyager app?	11:33:47
19	MR. ZACK: Objection to form.	11:33:49
20	A. So, I don't know every single	11:34:00
21	cryptocurrency that was eligible for rewards on	11:34:05
22	the Voyager app. I know that many of them were.	11:34:08
23	Q. Is it your belief that some	11:34:15
24	cryptocurrencies on the app were eligible for	11:34:17
25	earning interest and some were not?	11:34:21

Transcript of Lee Reiners  
Conducted on March 28, 2024

64

1	A.	I don't know.	11:34:27
2	Q.	You don't know because you've	11:34:31
3		never looked at this, or you can't remember?	11:34:33
4		MR. ZACK: Object to the form.	11:34:36
5		MR. BEST: Let me, if you don't	11:34:40
6		mind, Dan, let me just ask some questions and	11:34:41
7		get through this.	11:34:45
8		BY MR. BEST:	11:34:45
9	Q.	Thank you for your answer.	11:34:47
10		Can you, for the purposes of these	11:34:52
11		questions, take what I'm about to say as fact	11:34:55
12		for a hypothetical.	11:34:59
13		If there are cryptocurrencies on	11:35:02
14		the Voyager platform that are not part of the	11:35:06
15		Voyager Earn Program, are they nonetheless	11:35:10
16		securities, in your opinion?	11:35:20
17	A.	That's a hypothetical that I can't	11:35:25
18		answer.	11:35:27
19	Q.	Okay, that's fair.	11:35:28
20		What about when you said that a	11:35:30
21		uniform class is anybody who purchased an EPA,	11:35:38
22		okay; do I have your definition right as to kind	11:35:45
23		of a uniform class?	11:35:48
24	A.	I didn't use those exact words,	11:35:52
25		but I think that is an accurate description of	11:35:54

Transcript of Lee Reiners  
Conducted on March 28, 2024

65

1	the uniform class.	11:36:00
2	Q. Does the class include -- do you	11:36:03
3	consider the class to include investors who	11:36:06
4	purchased tokens outside of the Voyager Earn	11:36:10
5	Program Account as part of that class?	11:36:14
6	MR. KAYE: Form. What are you	11:36:20
7	defining as Earn Program Account, Steve? Do you	11:36:21
8	mean on the Voyager platform, account on	11:36:26
9	the platform?	11:36:29
10	MR. BEST: On the Voyager	11:36:30
11	platform. This is important, so I'm going to	11:36:31
12	repeat my question.	11:36:35
13	BY MR. BEST:	11:36:35
14	Q. Do you consider, in your	11:36:36
15	definition of class, those members of the class	11:36:39
16	who opened an account on the Voyager platform,	11:36:43
17	which then triggered an Earn Program Account,	11:36:46
18	that those investors who purchased tokens that	11:36:53
19	were not part of the Voyager Earn Program	11:36:58
20	rewards?	11:37:01
21	MR. ZACK: Object to the form.	11:37:03
22	A. So, I want to make sure I	11:37:09
23	understand the question, so maybe I can repeat	11:37:13
24	it back.	11:37:15
25	So you're asking me whether or not	11:37:19

Transcript of Lee Reiners  
Conducted on March 28, 2024

66

1	customers who purchased cryptocurrency through	11:37:25
2	Voyager but were never enrolled in the EPA	11:37:31
3	program --	11:37:33
4	Q. No.	11:37:37
5	A. -- would be counted as class	11:37:38
6	members?	11:37:41
7	Q. No.	11:37:43
8	A. Well, please clarify.	11:37:44
9	Q. So they opened up an account on	11:37:46
10	Voyager, okay. And they purchased	11:37:48
11	cryptocurrency that was available to purchase on	11:37:51
12	the Voyager platform, but was not part of	11:37:53
13	Voyager's Earn Program rewards system; and so	11:37:56
14	they did not earn interest on those	11:38:01
15	cryptocurrency tokens. Are they part of the	11:38:05
16	class?	11:38:07
17	MR. ZACK: Object to the form.	11:38:07
18	A. That would depend.	11:38:24
19	Q. That would depend on what?	11:38:30
20	A. It would depend on the information	11:38:31
21	that those specific individuals had access to	11:38:35
22	and that had been communicated to them. If they	11:38:42
23	were led to believe, through representations	11:38:47
24	made by Voyager or any of its employees or	11:38:49
25	affiliates, that by purchasing crypto through	11:38:53

Transcript of Lee Reiners  
Conducted on March 28, 2024

67

1 Voyager or using the Voyager application, that 11:38:59  
2 they could potentially profit, earn rewards, 11:39:04  
3 gain income, you know, whatever the gain may be, 11:39:08  
4 then it is possible for those members, for those 11:39:16  
5 individuals to be part of the class, in my 11:39:21  
6 opinion. 11:39:23

7 Q. And the only way to glean that 11:39:27  
8 information that you just mentioned is to go on 11:39:30  
9 a case-by-case basis with each of the account 11:39:33  
10 holders, correct? 11:39:37

11 MR. KAYE: Form. 11:39:39

12 A. Not necessarily. I mean, I 11:39:41  
13 believe in the SEC versus Telegram decision. 11:39:45  
14 The judge there said something along the lines 11:39:50  
15 that you don't have to search for the precise 11:39:53  
16 motivation or knowledge of every single 11:39:56  
17 purchaser, investor. You have to look at the 11:40:00  
18 characteristics of the EPA program as a whole. 11:40:05

19 Q. You didn't mention motivation once 11:40:10  
20 when giving your explanation. So taking 11:40:15  
21 motivation aside, how do you answer the 11:40:18  
22 questions that you posed without talking to the 11:40:20  
23 investors on an individual basis? 11:40:25

24 MR. ZACK: I object to the form of 11:40:27  
25 the question. 11:40:29



Transcript of Lee Reiners  
Conducted on March 28, 2024

68

1	Q.	You don't, correct?	11:40:35
2	MR. ZACK:	I'll certainly object	11:40:39
3		to you answering for him, Steve.	11:40:40
4	MR. BEST:	I accept that	11:40:46
5		objection. I withdraw that comment.	11:40:48
6	Q.	But answer the question, the	11:40:50
7		original question.	11:40:52
8	A.	Can you repeat the original	11:40:53
9		question, please.	11:40:55
10	MR. BEST:	Can you read it back,	11:40:55
11		Nancy.	11:41:14
12		(Last question read.)	11:41:14
13	A.	Well, I think you would have to	11:41:21
14		look at the broader information environment	11:41:23
15		associated with Voyager. The standard is not	11:41:27
16		what was in the mind or knowable to every single	11:41:31
17		customer. But if there was sufficient	11:41:39
18		information that would have led a reasonable	11:41:42
19		customer to believe that using Voyager, whether	11:41:45
20		or not they knew they were in EPAs, could result	11:41:52
21		in financial gains, then I think that's	11:41:56
22		sufficient to include those individuals in the	11:41:59
23		class definition.	11:42:02
24	Q.	Do you know if Voyager loaned out	11:42:05
25		the investment as it relates to cryptocurrency	11:42:10

Transcript of Lee Reiners  
Conducted on March 28, 2024

69

1	purchases that were not on the earn program	11:42:17
2	rewards system?	11:42:24
3	A. I don't know if Voyager lent out	11:42:27
4	cryptocurrencies that were not enrolled in EPAs.	11:42:30
5	Q. It's critical for the	11:42:33
6	consideration of whether they're a security,	11:42:36
7	though, correct?	11:42:40
8	MR. ZACK: Objection to form.	11:42:41
9	A. I don't think so.	11:42:47
10	MR. BEST: I'm going to let Dan	11:42:53
11	take it over at this point.	11:42:56
12	BY MR. SACHS:	11:42:56
13	Q. Let's go back to the report,	11:43:02
14	Exhibit 1, please.	11:43:03
15	Let me ask a general question	11:43:38
16	first. Do you see Section 2.03 here in front of	11:43:40
17	you, Mr. Reiners?	11:43:44
18	A. Yes.	11:43:46
19	Q. Do you see it says: "In October	11:43:46
20	2019, Voyager began offering EPAs allowing	11:43:48
21	customers to earn rewards based on their crypto	11:43:51
22	deposits. The EPAs were akin to savings account	11:43:55
23	with Voyager paying interest in the form of the	11:43:59
24	crypto that customers held as principal."	11:44:02
25	Do you see that?	11:44:05

Transcript of Lee Reiners  
Conducted on March 28, 2024

70

1	A.	Yes.	11:44:06
2	Q.	Is that a statement of fact or	11:44:06
3		opinion?	11:44:09
4		MR. ZACK: Objection to form.	11:44:09
5	A.	The first sentence is certainly a	11:44:21
6		statement of fact, assuming that it's correct in	11:44:23
7		the Second Amended Complaint. And I believe	11:44:29
8		that's also the date that was in the CFTC	11:44:32
9		complaint.	11:44:35
10		I think the use of the word "akin"	11:44:37
11		in the second sentence is more suggestive of an	11:44:42
12		opinion, although I'll note that Voyager also	11:44:44
13		promoted EPAs as being similar to savings	11:44:47
14		accounts but with a higher rate of return.	11:44:52
15	Q.	Okay. Let's focus on the first	11:44:56
16		sentence then. What is the source of that fact?	11:44:58
17	A.	I believe I pulled this from the	11:45:04
18		Second Amended Complaint. It's either that or	11:45:09
19		the CFTC complaint.	11:45:13
20	Q.	So if there are sentences like	11:45:15
21		this one of fact in your report that don't have	11:45:17
22		citations, should we assume that they are coming	11:45:21
23		from the Second Amended Complaint or the CFTC	11:45:24
24		complaint?	11:45:28
25		MR. ZACK: Objection to form.	11:45:28

Transcript of Lee Reiners  
Conducted on March 28, 2024

98

1	investor purchased an investment contract?	12:54:19
2	MR. ZACK: Objection to form.	12:54:21
3	A. All of the other facts and	12:54:28
4	analysis around EPAs as laid out in my expert	12:54:30
5	report.	12:54:34
6	MR. SACHS: Okay. I want to put	12:54:37
7	one thing on the record before we go forward.	12:54:39
8	Actually, Sue, could you please pull up Tab 16,	12:54:41
9	please.	12:54:47
10	Mr. Zack, I would ask you to	12:54:50
11	refrain from making speaking objections and to	12:54:52
12	limit your objection to form because, in my	12:54:56
13	view, there were a couple objections you made in	12:54:58
14	the prior session that were leading the witness;	12:55:00
15	so I'll ask you to limit yourself going forward.	12:55:03
16	MR. ZACK: I'd like you to tell me	12:55:05
17	which those were.	12:55:06
18	MR. SACHS: On the next break I'm	12:55:08
19	happy to point you to it, but I'm asking you to	12:55:10
20	not do that going forward.	12:55:12
21	MR. ZACK: You do not have to	12:55:14
22	worry about me objecting other than form, unless	12:55:16
23	necessary.	12:55:21
24	MR. SACHS: We have a new exhibit	12:55:31
25	here and I would rather not have on the screen	12:55:32

Transcript of Lee Reiners  
Conducted on March 28, 2024

99

1	what is currently on the screen.	12:55:36
2	Sue, I'm pulling up Tab 16,	12:55:46
3	please.	12:55:50
4	THE TECHNICIAN: I just took it	12:55:51
5	off. I apologize.	12:55:53
6	MR. SACHS: That's okay.	12:55:53
7	THE TECHNICIAN: And you want me	12:55:56
8	to mark this Exhibit 3?	12:55:57
9	MR. SACHS: Yes, please.	12:55:58
10	(Exhibit Reiners 3 was marked and	12:56:02
11	introduced at this time.)	12:56:06
12	THE TECHNICIAN: You have control.	12:56:13
13	BY MR. SACHS:	12:56:14
14	Q. Mr. Reiners, this is a screenshot	12:56:14
15	from the Wayback Machine of the Voyager either	12:56:17
16	website or application. Have you seen this	12:56:23
17	before?	12:56:26
18	A. Not in this form. I think some of	12:56:33
19	this information was included in other Voyager	12:56:36
20	complaints.	12:56:41
21	Q. Okay. So you may have seen the	12:56:42
22	information in it, but the document itself is	12:56:44
23	not something you've looked at?	12:56:46
24	A. Not to my recollection.	12:56:49
25	Q. Okay. I'd like to ask you about	12:56:51

Transcript of Lee Reiners  
Conducted on March 28, 2024

100

1	some of this information at the top.	12:56:53
2	A. Um-hum.	12:56:56
3	Q. I want you to take the time that	12:56:56
4	you need to review it. Why don't you do that,	12:57:00
5	and my first question is: Do you see the list	12:57:03
6	of assets on page 1?	12:57:07
7	A. Yes, yes.	12:57:10
8	Q. Do you see that this chart	12:57:11
9	reflects rewards available to Voyager customers,	12:57:13
10	depending on the asset and minimum monthly	12:57:20
11	balance for that asset?	12:57:24
12	A. Yes.	12:57:27
13	Q. And do you understand, or do you	12:57:28
14	see that the rewards at this time, which was	12:57:32
15	October, in the column in the middle, has a	12:57:34
16	percentage of interest that would be earned on	12:57:38
17	an annualized basis for each of those assets?	12:57:41
18	A. I see the percentage interest. I	12:57:46
19	will take you at your word that that is payable	12:57:51
20	based on an annualized basis.	12:57:54
21	Q. Fair enough. Okay. That's fine	12:57:56
22	for purposes of the question.	12:58:01
23	There are, I don't know, maybe 20	12:58:03
24	assets listed here, and I will represent to you	12:58:06
25	that a cryptocurrency called Klay, K-l-a-y, or	12:58:09

Transcript of Lee Reiners  
Conducted on March 28, 2024

101

1	Klay-token, K-l-a-y-t-n, is a cryptocurrency	12:58:16
2	that does not appear on this list.	12:58:24
3	Have you ever heard of Klaytn	12:58:26
4	before?	12:58:30
5	A. No.	12:58:31
6	Q. If an investor in an EPA,	12:58:31
7	purchaser of an EPA -- strike that. Let me	12:58:35
8	start over.	12:58:37
9	If a customer deposited money into	12:58:38
10	an EPA and purchased Klaytn, which is not one of	12:58:43
11	the interest-bearing assets here, would you	12:58:49
12	consider that customer to have purchased a	12:58:52
13	security under your expert opinion in this case?	12:58:55
14	MR. ZACK: Object to the form.	12:58:58
15	A. Yes.	12:59:08
16	Q. Why is that the case?	12:59:09
17	A. Because the assessment of whether	12:59:15
18	or not EPAs are investment contracts and,	12:59:18
19	therefore, securities, is based upon the	12:59:21
20	totality of the facts and circumstances	12:59:22
21	associated with EPAs. It is not based upon	12:59:24
22	whether or not one specific individual who had	12:59:28
23	an EPA, a hypothetical individual who had an	12:59:31
24	EPA, actually did or did not receive rewards.	12:59:35
25	So you don't have to assess the	12:59:41

Transcript of Lee Reiners  
Conducted on March 28, 2024

102

1	precise knowledge or motivation of any one	12:59:42
2	individual. You have to look at the totality of	12:59:48
3	EPAs.	12:59:51
4	Q. Is it therefore your expert	12:59:53
5	opinion that an individual who buys an EPA using	12:59:54
6	the Klaytn and one who buys one of the tokens	13:00:00
7	listed here, is not different in any relevant	13:00:05
8	purpose for assessing whether the EPA is a	13:00:07
9	security?	13:00:11
10	MR. ZACK: Objection to form;	13:00:11
11	asked and answered. You can answer it again if	13:00:16
12	you like.	13:00:20
13	A. Again, given all the facts and	13:00:22
14	circumstances around the offering and operations	13:00:25
15	of the EPA program, it is my belief that all	13:00:32
16	EPAs are investment contracts.	13:00:41
17	Q. And for the individual who puts	13:00:46
18	their money into Klaytn in the EPA, what are the	13:00:48
19	facts or documents that would lead you to	13:00:55
20	conclude that such a person would reasonably	13:00:57
21	expect a profit from their EPA?	13:01:01
22	MR. ZACK: Object to form.	13:01:06
23	A. I can't speculate as to the	13:01:11
24	mindset of a hypothetical individual. I can	13:01:14
25	only speak to all of the facts around the EPA	13:01:18



Transcript of Lee Reiners  
Conducted on March 28, 2024

103

1 program, which I reviewed and analyzed in my  
2 report.

3 Q. Right, but in this situation we  
4 have an individual who purchased an asset that  
5 was not interest-bearing; and so they're not  
6 expecting profit from interest. And I'm asking  
7 what are the facts that you would point to as  
8 establishing that such a person, or another  
9 similarly situated, was expecting profit from  
10 the EPA?

11 MR. ZACK: Object to form.

12 A. It is difficult for me to  
13 speculate as to what this hypothetical  
14 individual did or did not expect. I would need  
15 to have additional information about what this  
16 person knew about the broader operations of the  
17 EPA program.

18 Furthermore, even if they knew  
19 very little, that does not change my assessment  
20 as to whether or not EPAs are securities,  
21 because that assessment has to be based upon, as  
22 numerous courts have found, the entire  
23 circumstances associated with EPAs.

24 Q. So is it your view that the EPA  
25 itself is a security?

13:01:23  
13:01:28  
13:01:29  
13:01:31  
13:01:34  
13:01:38  
13:01:41  
13:01:45  
13:01:47  
13:01:50  
13:01:51  
13:01:58  
13:02:00  
13:02:02  
13:02:07  
13:02:11  
13:02:16  
13:02:18  
13:02:21  
13:02:24  
13:02:26  
13:02:32  
13:02:36  
13:02:39  
13:02:42

Transcript of Lee Reiners  
Conducted on March 28, 2024

104

1	A.	It is my view --	13:02:45
2		MR. ZACK: Object to form.	13:02:48
3	A.	It is my view, as laid out in my	13:02:50
4		expert report, that EPAs share many of the	13:02:52
5		circumstances and characteristics that are	13:02:57
6		indicative of an investment contract.	13:03:00
7	Q.	And is it your view that the EPA	13:03:04
8		itself is the thing that shares the	13:03:13
9		circumstances and characteristics that are	13:03:17
10		indicative of an investment contract?	13:03:18
11		MR. ZACK: Object to form.	13:03:21
12	A.	Yes, it is my view that the EPA	13:03:26
13		program represents or shares the characteristics	13:03:29
14		common to an investment contract.	13:03:34
15	Q.	Do you have the same view as to a	13:03:41
16		buyer of an EPA -- excuse me.	13:03:45
17		Do you have the same view as to	13:03:50
18		the buyer of an EPA that purchased a	13:03:52
19		cryptocurrency that was not interest-bearing	13:03:57
20		under the application of the Reves test?	13:03:59
21		MR. ZACK: Object to the form.	13:04:03
22	A.	Yes.	13:04:08
23	Q.	Similar question to what I asked	13:04:10
24		you: What are the facts that lead you to	13:04:12
25		conclude that a buyer of an EPA that deposits	13:04:15

Transcript of Lee Reiners  
Conducted on March 28, 2024

105

1	money into a cryptocurrency that's not	13:04:18
2	interest-bearing would be buying a security	13:04:22
3	under the Reves test?	13:04:24
4	MR. ZACK: Object to form; asked	13:04:26
5	and answered.	13:04:28
6	A. The answer is the same as provided	13:04:30
7	for an investment contract. Again, you have to	13:04:32
8	look at the totality of facts and circumstances	13:04:36
9	associated with EPAs. And I think when you do	13:04:39
10	that, it duplicates a note under the Reves test.	13:04:43
11	Q. And are there any specific facts	13:04:47
12	that you can point to that would have a	13:04:49
13	reasonable buyer expect profit under the Reves	13:04:52
14	test when they buy an EPA with money deposited	13:04:58
15	into a noninterest-bearing cryptocurrency?	13:05:00
16	MR. ZACK: Objection to form.	13:05:05
17	A. Again, my analysis is not based	13:05:07
18	off of one individual purchaser. It's based off	13:05:09
19	of the entirety of the facts and circumstances	13:05:15
20	associated with EPAs.	13:05:18
21	Q. And I'm asking for you to identify	13:05:20
22	the specific facts relating to the entire	13:05:22
23	offering of EPAs that support your analysis.	13:05:27
24	MR. ZACK: Object to form; asked	13:05:30
25	and answered.	13:05:32